



GUIDELINES FOR ASSESSING CIVIL CHARGES

Whether a civil charge is warranted in a particular case will depend upon the facts and should be determined at the outset of the settlement process. The purpose of including a civil charge in an administrative Consent Special Order is twofold:

- A civil charge acts as a deterrent to future noncompliance in the regulated community; and
- A civil charge may be used to ensure a level playing field throughout the regulated community by recovering any economic advantage that may have been gained from noncompliance.

In order to be effective, the method employed to assess a civil charge should be fair, reasonable, and easily understood. Moreover, the method used should be applied consistently across the State to ensure that the regulated community is treated equitably throughout the Commonwealth.

The method of assessing civil charges outlined below is intended to serve the twofold purpose of deterring noncompliance and recovering economic benefit, in addition to ensuring its consistent application by DCR staff across Virginia. The proposed method is fair and reasonable in that it is graduated and assesses the highest dollar amounts in cases that have resulted in the greatest harm either to human health or the environment or to the integrity of the Virginia Stormwater Management Program (VSMP), or both.

The Civil Charge Worksheets included on pages four and five of these Guidelines illustrate in an easily understood manner how the method is applied in each enforcement case in order to derive a civil charge for inclusion in a Consent Special Order. The Worksheets are a means of ensuring that civil charges are assessed consistently across the State.

Method for Assessing a Civil Charge

Civil charges have two components:

- A **gravity component** designed to measure harm to either human health or the environment or to the integrity of the VSMP; and
- An **economic benefit component** designed to eliminate any financial advantage accrued from breaking the law.

The gravity of the harm caused by an alleged violation to either human health or the environment or to the integrity of the VSMP, is measured by degree of severity as seriously harmful, moderately harmful, or marginally harmful. The degree of harmfulness assigned to a particular violation (*i.e.*, serious, moderate, or marginal) will depend on the consequences of the alleged violation, whether actual or potential; the duration of the violation; and the extent of the deviation from the requirement in the law. Assigning a degree of harmfulness is a qualitative decision that is based on the best professional judgment of DCR staff and approved by DCR management.

The economic benefit derived from an alleged violation is measured in terms of delayed or avoided expenditures that would have prevented the noncompliance from occurring. Removing the economic benefit of noncompliance ensures that the regulated party responsible for the alleged violation does not gain any competitive advantage for failing to comply with the law.

The following hypothetical situation illustrates how the gravity of harm, economic benefit, and resulting civil charge would be determined in a particular case.

Example: A developer failed to install a sediment basin (*i.e.*, BMP) required by the construction site's approved Erosion and Sediment Control Plan for the first four months of the eight-month construction period. Because the sediment basin was not installed during those four months, approximately 50 cubic yards of sediment from the site discharged into a nearby stream.

Under the circumstances of this case, the degree of harm would be "serious" based on the three criteria described above (*i.e.*, the consequences of the violation, the duration, and the extent of deviation from the regulatory requirement). The discharge of sediment resulted in a seriously detrimental impact to the stream because it reduced the stream's benthic population and depleted some of the underwater grasses compromising the water quality. Moreover, the duration of the violation spanned four months or one-half of the entire construction period, as did the deviation from the Permit requirement.

The developer delayed the cost of installing, operating, and maintaining the stormwater BMP that could have prevented the harmful impacts from occurring for four months and in doing so accrued an economic benefit to himself from the money he saved and the competitive advantage he may have gained over other developers.

In computing the dollar amount of a civil charge in this case, the Worksheet indicates that the developer's failure to install the stormwater BMPs for four months equals \$4,000 (1 BMP x \$1,000 x 4 months). With respect to the economic benefit of noncompliance, the estimated delayed cost for installing, operating, and maintaining the BMP is \$600. The \$4,000 gravity-

based component added to the \$600 economic benefit equals \$4,600. Thus, \$4,600 is the recommended civil charge.

In the hypothetical example above, the developer would also be responsible for any corrective actions that may be necessary to remedy the harmful impact caused by the noncompliance, including removing the sediment from the stream. The corrective actions would be incorporated into a schedule of compliance and appended to the Consent Special Order. The costs of the corrective actions are in addition to the civil charge. During the course of negotiating of the terms of the Consent Special Order, new facts may be introduced that result in the amount of the civil charge being adjusted.

Civil charges are paid into the State Treasury and deposited into the Stormwater Management Fund.

These guidelines for assessing civil charges do not carry the force of law but are intended as a framework for ensuring fair and consistent enforcement. Further, these guidelines are not intended and cannot be relied on to create any rights, substantive or procedural, on the part of any person or entity. DCR reserves the right to deviate from these guidelines as it deems necessary to carry out the intent of the Virginia Stormwater Management Act and Regulations.

STORMWATER CIVIL CHARGE WORKSHEET

1. Gravity-based Component	Serious	Moderate	Marginal	
Violations* and Frequency of Occurrence **	\$\$ x occurrences	\$\$ x occurrences	\$\$ x occurrences	SUBTOTAL
No Permit Registration (<i>each month w/o coverage = 1 occurrence</i>) (Maximum charge \$12,000)	2,000 x ____	1,000 x ____	500 x ____	
No SWPPP (No SWPPP components including E&S Plan) (<i>each month of land-disturbing w/o SWPPP = 1 occurrence</i>) (Maximum charge \$12,000)	2,000 x ____	1,500 x ____	1,000 x ____	
Incomplete SWPPP	1,000 x ____	500 x ____	300 x ____	
SWPPP not on site	500 x ____	300 x ____	100 x ____	
No approved Erosion and Sediment Control Plan	2,000 x ____	1,000 x ____	500 x ____	
Failure to install stormwater BMPs or erosion and sediment ("E&S") controls	1,000 x ____	500 x ____	300 x ____	
Stormwater BMPs or E&S controls improperly installed or maintained	750 x ____	500 x ____	250 x ____	
Operational deficiencies (<i>e.g.</i> , failure to initiate stabilization measures as soon as practicable; failure to implement control measures for construction debris)	5,000 x ____	2,000 x ____	1,000 x ____	
Failure to conduct required inspections	3,000 x ____	2,000 x ____	500 x ____	
Incomplete, improper or missed inspections (<i>e.g.</i> , inspections not conducted by qualified personnel; site inspection reports do not include date, weather information, location of discharge, or are not certified, <i>etc.</i>)	1,000 x ____	500 x ____	300 x ____	
			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended Civil Charge			Total (#1 and #2)	

* Each stormwater BMP or E&S control that is either not installed or improperly installed or maintained is a separate violation.

** The frequency of occurrence is per event unless otherwise noted.

MS4 CIVIL CHARGE WORKSHEET

1. Gravity-based Component	Serious	Moderate	Marginal	
Violations* and Frequency of Occurrence	\$\$ x occurrences	\$\$ x occurrences	\$\$ x occurrences	SUBTOTAL
Failure to apply for and obtain Permit	10,000 x ____	5,000 x ____	1,000 x ____	
Incomplete Permit applications (<i>e.g.</i> , no map)	1,000 x ____	500 x ____	300 x ____	
Failure to submit Annual Report (<i>each month late = 1 occurrence</i>)	1,000 x ____	500 x ____	300 x ____	
Failure to comply with Permit reporting requirements* (<i>e.g.</i> , monitoring)	2,500 x ____	1,500 x ____	750x ____	
Failure to comply with Permit conditions* (<i>e.g.</i> , failure to develop, implement, or enforce Stormwater Management Plan)	5,000 x ____	3,000 x ____	1,500x ____	
Include multiplier of 0.5 for Phase I facilities			Subtotal #1	
2. Estimated Economic Benefit of Noncompliance (if applicable)			Subtotal #2	
3. Recommended Civil Charge			Total (#1 and #2)	

* Each reporting requirement or Permit condition not met is a separate violation.